

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
MONKE BROS. FERTILIZER	)	Docket No. CWA-07-2003-0101
COMPANY	)	CERCLA-07-2003-0101
	)	EPCRA-07-2003-0101
Respondent	)	
	)	
	)	CONSENT AGREEMENT AND FINAL
	)	ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of a civil penalty was initiated on April 1, 2003, pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6) as amended by the Oil Pollution Act of 1990, when the United States Environmental Protection Agency (EPA or Complainant) issued to Monke Bros. Fertilizer Company (Respondent) a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with violating § 103(a) of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6; § 304(b) of EPCRA, 42 U.S.C. § 11004(b), and 40 C.F.R. § 355.40(b); and § 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Subsequently, Complainant and Respondent entered into negotiations in an attempt to settle the allegations contained in the Complaint. The Consent Agreement and Final Order (CAFO) set forth below is the result of these negotiations and represents settlement of this Complaint.

### CONSENT AGREEMENT

1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the factual allegations of the Complaint.

2. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint, and waives his right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agrees to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

4. Respondent agrees that on or before September 30, 2003, it will have properly completed the following: (a) construct a dike with a relief tube to prevent a discharge of chemical or other pollutants into Papillion Creek from a release, and (b) purchase for, and deliver to, the Bennington Fire Department, Bennington, Nebraska, a new Air-Pak SCBA, respiratory protection. Respondent further agrees not to claim any of the costs associated with the construction of the dike, or the purchase and gift of the Air-pak respiratory to the Bennington Fire Department, as a business expense on its federal, state, or local income tax returns. Further, Respondent agrees to submit proof of the completion of the aforementioned activities on or before October 15, 2003, by written notice to Rupert G. Thomas, Office of Regional Counsel, U.S. EPA, 901 North 5<sup>th</sup> Street, Kansas city, Kansas 66101. Respondent also agrees that if it fails

to timely accomplish the activities outlined in this paragraph, Respondent will immediately pay a stipulated penalty of Thirty Eight Thousand Three Hundred and Fifty Five Dollars (\$38,355).

This stipulated penalty is in addition to the mitigated penalty agreed to by Respondent and complainant in this matter.

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payments of a mitigated civil penalty in the amount of Twenty Eight Thousand Six Hundred Forty Five Dollars (\$28,645.00) within thirty (30) days of the effective date of the Final Order.

6. Respondent certifies by signing this CAFO that to its knowledge it is presently in compliance with CERCLA, EPCRA, and CWA, and all regulations promulgated thereunder.

7. The CAFO represents settlement of the allegations contained in the Complaint only. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency.

8. Failure to timely pay the assessed penalty, and the stipulated penalty in the event it becomes due, may result in the referral of this matter to the United States Department of Justice for collection.

#### FINAL ORDER

Pursuant to the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11045, and the Federal Water Pollution Control Act (CWA), 33 U.S.C. § 1321, and based upon the information set forth in this Consent

Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty Eight Thousand Six Hundred and Forty Five Dollars (\$28,645.00) in the following manner: Nineteen Thousand Three Hundred Twenty Two Dollars and Fifty Cents (\$19,322.50) shall be made payable to the "Treasurer, United states of America" in the form of Cashier's or Certified Check and mailed to: U.S. EPA-Region VII (Regional Hearing Clerk), C/O Mellon Bank, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251. Nine thousand Three Hundred Twenty Two Dollars and Fifty Cents (\$9,322.50) shall be made payable to the "EPA Hazardous Substance Superfund" and mailed to: EPA-Region VII, Superfund Accounting, C/O Mellon Bank, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251. The payments shall be identified as In the Matter of Monke Bros. Fertilizer Company. A copy of the checks shall be forwarded to Rupert G. Thomas, Office of Regional Counsel, Region VII, EPA, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

2. The payments shall be paid on or before 30 days of the effective date of the Final order (the date by which the payment must be received shall be hereinafter be referred to as the "due date"). The effective date of this Order shall be the date on which it is signed by the Regional Judicial officer.

3. Respondent's failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this Order, or the stipulated penalty should the same become due, may result in the commencement of a civil action in Federal District Court to recover the remaining balance, along with penalties and accumulated interest, and any other assessments and/ or penalties permitted by law.

4. Respondent and Complainant shall bear their own costs and Attorney's fees incurred as a result of this matter.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

By: 

Rupert G. Thomas

Attorney

Office of Regional Counsel

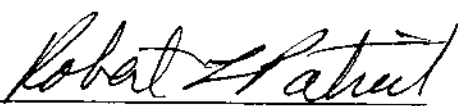
Date: 8/8/03

RESPONDENT:  
MONKE BROS. FERTILIZER COMPANY

By: 

Date: 7/30/2003

IT IS SO ORDERED. This Order shall become effective immediately.



Robert L. Patrick

Regional Judicial Officer

U.S. Environmental Protection Agency

Region VII

Date: November 4, 2003

IN THE MATTER OF, Monke Bros Fertilizer Company, Respondent  
Docket No. CWA-07-2003-0101; CERCLA-07-2003-0101; EPCRA-07-2003-0101

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Rupert G. Thomas  
U.S. Environmental Protection Agency  
Region VII  
Office of Regional Counsel  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

Robert J. Vincze  
Greenbert Traurig, LLP  
1200 17<sup>th</sup> Street, Suite 2400  
Denver, Colorado 80202

Dated: 11/4/03

A handwritten signature in cursive script, reading "Kathy Robinson", written over a horizontal line.

Kathy Robinson  
Regional Hearing Clerk